

or Company.

(c) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with KRS 424. Company shall notify its subscribers of all evaluation sessions by announcement on at least two (2) of the highest-rated origination channels of its system between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days preceding each session.

(d) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fee; penalties; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this ordinance; judicial and FCC ruling; line extension policies; and Company or County rules.

(e) Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more residents of Boone County, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.

Section 3. Initial Rates, Request Timing, Determination of Authority

(a) Initial Rates.

(1) Company shall establish initial rates for its services in accordance with the rates contained in Company's application for this franchise.

(2) Initial basic subscriber rates shall be effective for a minimum of two (2) years from the date of the franchise award.

(3) Company shall waive basic subscriber service installation fees for a reasonable period of time as each segment of the system in Boone County is activated.

(b) The County and the Company agree that the County does not have authority, as of the date of this Ordinance, to regulate cable subscriber rates pursuant to preemptive actions by federal regulatory authorities. In the event the County regains that authority at some future date during the period of this franchise, the County and Board will exercise such authority in accordance with the terms of Article III, Section 4, below.

Section 4. Rate Change Procedures

(a) Minimum Timing of Requests.

Company may request a rate change at any time after two (2) years of the franchise award, provided that not more than one (1) request may be made by Company in any twelve (12) month period.

(b) Rates Subject to Review.

The CATV Board shall have the authority, to the extent consistent with other law, ^{and Article III, Section 3(b) above} to review and approve the following rates, fees and changes:

- (1) Rates for the provision of basic service to subscribers, whether residential or commercial.
- (2) Rates for the connection, installation and reinstatement (including converters) of basic service, whether residential or commercial.
- (3) Rates for installation connection and reinstatement of basic service where unusual circumstances exist such as remote or inaccessible subscriber locations or subscriber requested underground service drops.

(c) Company may petition the CATV Board for a change in rates by filing, in triplicate, a proposed rate schedule with the County Clerk, which petition shall include the justification(s) for the proposed schedule. Said petition shall be filed at least ninety (90) days prior to the requested implementation date of the rate change. One (1) copy of the petition shall remain on file with the County Clerk and be open for public inspection.

(d) Within the ninety (90) days of the filing of the petition for rate change, the CATV Board shall hold an appropriate, public hearing to consider the proposed rate change, at which hearing all persons desiring to be heard, including Company, shall be heard on any matter, including but not limited to, the performance of this franchise, Company's services, and the proposed new rates.

(e) Upon notice of any public hearing as provided in subsection (c), Company shall notify its subscribers of the time, place and subject matter of the public hearing by announcement on at least two (2) of the highest-rated origination channels of its

system tween the hours of 7:00 p.m. and 9:00 p.m., for at least five (5) consecutive days prior to the hearing. In addition, notice of any public hearing shall be published in a newspaper of general circulation at least once, but may be published two (2) or more times, provided that one (1) publication occurs not less than seven (7) nor more than twenty-one (21) days before the public hearing. Each advertisement must be two (2) column inches in height and four (4) column inches long. Company shall be responsible for publication and associated costs.

(f) Within ninety (90) days after said hearing, the CATV Board shall render a written decision on Company's petition, either accepting, rejecting, modifying or deferring the same and reciting the basis of its decision. The CATV Board shall consider, inter alia, the following factors in approving or disapproving the petition:

- (1) the ability of Company to render system services and to derive a reasonable profit therefrom under the existing rate schedule and under the proposed rate schedule;
- (2) the revenues and profits derived from system services;
- (3) the efficiency of Company;
- (4) the quality of the service offered by Company;
- (5) the original cost of the System less depreciation;
- (6) a fair rate of return with respect to the cost of borrowing and the rates of return on investments

- having similar risks to that of cable television;
- (7) the extent to which Company has adhered to the terms of this agreement; and
 - (8) fairness to Boone County residents, subscribers and users.

The Board shall not consider any valuation based upon this franchise or the Company's goodwill and these items of value shall neither be amortized as an expense nor shall a return be paid on them.

(g) If the CATV Board fails to render a written decision either accepting, rejecting, modifying, or deferring Company's petition within ninety (90) after said hearing, Company shall thereafter be entitled to put its proposed new rates into effect on a provisional basis, provided that it shall keep a full and accurate accounting of all income resulting from said provision rates and shall be obliged for a period of ninety (90) days thereafter to refund the amount by which said provisional rates exceed the rates ultimately established by the CATV Board. Upon request by the CATV Board, Company shall provide a bond or other reasonable surety to insure that possible refunds due under this subsection shall be promptly made. The bond or surety shall be in an amount not to exceed the difference between the amount of revenues generated in ninety (90) days at the previously existing rates and the amount of revenues expected to be generated in ninety (90) days at the provisional rates.

(h) If no final decision on Company's petition has been

rendered by the CATV Board within one hundred eighty (180) days of the hearing, Company's petition will be deemed approved. Action of the CATV Board is final and not appealable.

(i) Company's petition for a rate increase shall include, but not be limited to, the following financial reports, which shall reflect the operations of the Boone County system only.

- (1) Balance Sheet
- (2) Income Statement
- (3) Cash Flow Statement
- (4) Statement of Sources and Applications of Funds
- (5) Detailed Supporting Schedules of Expenses, Income, Assets and other items as may be required.
- (6) Statement of Current and Projected Subscribers and Penetration.

The Company's accounting records applicable to the system shall be available for inspection by the County at all reasonable times. The Board shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to the Boone County operation. The documents listed above shall include sufficient detail and/or footnotes as may be necessary to provide the Board with the information needed to make accurate determinations as to the financial condition of the system. All financial statements shall be certified as accurate by an officer of Company.

Section 5. Penalties

For the violation of any of the following provision of this franchise, penalties shall be chargeable to the letter of credit as follows:

(a) For failure to complete system construction and provide service pursuant to Article II, Section 2, unless the CATV Board specifically approves the delay by motion or resolution, due to the occurrence of conditions beyond Company's control, Company shall pay Five Hundred Dollars (\$500.00) per week for each week, or part thereof, the deficiency continues.

(b) For failure to provide data, documents, reports, information pursuant to Article II, Sections 9, 11, 12, 13 and Article III, Section 4, Company shall pay Fifty Dollars (\$50.00) per day each violation occurs or continues.

(c) For failure to test, analyze and report on the performance of the system following a request pursuant to Article II, Section 7, Company shall pay Fifty Dollars (\$50.00) per day for each day, or part thereof, that such noncompliance continues.

(d) For failure to comply with the operational standards following the Board's resolution directing Company to make improvements pursuant to Article II, Section 5, Company shall forfeit Two Hundred Dollars (\$200.00) per day or part thereof that violation continues.

Section 6. Forfeiture and Termination

(a) In addition to all other rights and powers retained by the CATV Board under this franchise or otherwise, the CATV Board

reserves the right to forfeit and terminate the franchise and all rights and privileges of Company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by Company shall include, but shall not be limited to the following:

- (1) Violation of any material provision of the franchise or any material rule, order, regulation or determination of the CATV Board made pursuant to the franchise;
- (2) Attempt to evade any material provision of the franchise or practice any fraud or deceit upon Boone County or its subscribers or customers;
- (3) Failure to begin or complete system construction or system extension as provided under this franchise;
- (4) Failure to provide the service promised in Company's application as incorporated herein;
- (5) Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the CATV Board; or
- (6) Material misrepresentation of fact in the application for or negotiation of the franchise.

(b) The foregoing shall not constitute a major breach if the violation occurs but it is without fault of Company or occurs as a result of circumstances beyond its control. Company shall not be excused by mere economic hardship nor by misfeasance or

malfeasance of its directors, officers or employees.

(c) The CATV Board may make a written demand that Company comply with any such provision, rule, order, or determination under or pursuant to this franchise. If the violation by Company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the County may place the issue of termination of the franchise before the CATV Board. The CATV Board shall cause to be served upon Company, at least twenty (20) days prior to the date the CATV Board considers the issue of termination, a written notice of intent to request such termination at the time and place of the meeting. Public notice shall be given of the meeting and issue which CATV Board is to consider.

(d) The CATV Board shall hear and consider the issue and shall hear any person interested therein, and shall determine in its discretion whether or not any violation by Company has occurred.

(e) If the CATV Board shall determine the violation by Company was the fault of Company and within its control, the CATV Board may, by resolution, declare that the franchise of Company shall be forfeited and terminated unless there is compliance within such period as the CATV Board may fix, such period not to be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

(f) The issue of forfeiture and termination shall

automatically be placed upon the CATV Board agenda at the expiration of the time set by it for compliance. The CATV Board then may terminate the franchise forthwith upon finding that Company has failed to achieve compliance or may further extend the period, in its discretion.

Section 7. Foreclosure

Upon the foreclosure or other judicial sale of all or a substantial part of Company's cable system, or upon the termination of any lease covering all or a substantial part of Company's cable system, Company shall notify the CATV Board of such fact, and such notification shall be treated as a notification that a change in control of Company has taken place, and the provisions of this franchise governing the consent of the CATV Board to such change in control of Company shall apply.

Section 8. Receivership

The CATV Board shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of Company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(a) Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied

with all the provisions of this ordinance and remedied all defaults thereunder; and

(b) Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this ordinance and the franchise granted to Company.

Section 9. Purchase of CATV System By County

(a) Rights to Purchase.

In the event Company forfeits and Boone County terminates this franchise pursuant to provisions of this Ordinance, or at the normal expiration of the franchise term, Boone County shall have the right, directly or as an intermediary, to purchase Company's cable system.

(b) Franchise Valuation.

The value of the franchise shall be the aggregate of the replacement value of tangible assets and the going concern value of the CATV system.

The "going concern value" shall mean the benefits that attach to the business as a result of its location in the county, Company's reputation among franchise subscribers or potential subscribers for dependability and quality of service, and any other circumstances resulting in probable retention of old subscribers or acquisition of new subscribers; except no value shall be assigned to either the franchise itself or any right, privilege or

expectancy arising to Company out of the right to transact business under the franchise, and particularly no value shall be allowed for any increase in value arising out of any expectation of cable CATV system revenues beyond the forfeiture and termination date or expiration date, whichever is sooner.

In the acceptance of this franchise Company expressly waives its rights, if any, to relocation costs that might otherwise be provided by law.

(c) Date of Valuation.

The date of valuation shall be no earlier than the day following the date of expiration or termination and no later than the date County make a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.

(d) Transfer to County.

Upon exercise of this option and the payment of the above sum by Boone County and its service of official notice of such action upon Company, Company shall immediately transfer to Boone County possession and title to all facilities and property, real and personal, of its cable system, free from any and all liens and encumbrances not agreed to be assumed by Boone County in lieu of some portion of the purchase price set forth above; and Company shall execute such warranty deeds or other instruments of conveyance to County as shall be necessary for this purpose.

(e) Arbitration of Value and Costs.

(1) In the event Boone County and Company cannot agree upon the value of CATV system, either may give notice of a demand

to the other for arbitration.

(2) Arbitration shall commence and proceed according to law except as follows:

(a) The parties shall, within fifteen (15) days, appoint one arbitrator each who is experienced and knowledgeable in the valuation of business property. Arbitrators shall each agree upon the selection of a third arbitrator, similarly qualified, within fifteen (15) days.

(b) Within thirty (30) days after appointment of all arbitrators and upon ten (10) day's written notice to parties, the board of arbitrators shall commence a hearing on the issue of valuation.

(c) The hearing shall be recorded and may be transcribed at the request of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated in the order to adjourn, except as otherwise authorized by Boone County Attorney.

(d) At the close of the hearings and within thirty (30) days, the board of arbitrators shall prepare findings and decision agreed upon by a majority of the board which shall be filed with the County and served by mail upon Company. Unless the parties extend by mutual agreement the time which the board of arbitrators has to make a decision, the proceedings shall become null and void and shall be started anew.

(e) The decision of the board of arbitrators shall

be final and binding upon the parties.

(f) Either party may seek judicial relief in the following circumstances:

- (i) a party fails to select an arbitrator;
- (ii) the arbitrators fail to select a third arbitrator;
- (iii) one or more arbitrator is unqualified;
- (iv) designated time limits have been exceeded;
- (v) the board of arbitrators has not proceeded expeditiously; and
- (vi) based upon the record the board of arbitrators abused its discretion.

(g) In the event a court of competent jurisdiction determines the board of arbitrators has abused its discretion, it may order the arbitration procedure repeated and issue findings, orders and directions, with costs of suit to be awarded to the prevailing party.

(h) The costs of arbitration shall be borne equally unless the board of arbitrators finds the offer of Boone County or the demand of Company was unreasonable, in which case, cost may be apportioned so that less or none of the costs may be borne by one party.

Section 10. Compliance with State and Federal Law

Notwithstanding any other provisions of this franchise to the contrary, Company shall at all times comply with all laws and regulations of the state and federal government or any

administrative agencies thereof. Provided, however, if any such state or federal law or regulation shall require Company to perform any service, or shall permit Company to perform any service, or shall prohibit Company from performing any service, in conflict with the terms of this franchise or of any law or regulation of Boone County, then as soon as possible following knowledge thereof, Company shall notify the CATV Board of the point of conflict believed to exist between such regulation or law and the laws or regulations of Boone County or this franchise.

If the CATV Board determines that a material provision of this Ordinance is affected by any subsequent action of the state or federal government, the CATV Board shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this agreement.

Section 11. Landlord/Tenant

(a) Interference with Cable Service Prohibited.

Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable communication service, cable installation or maintenance from a cable communication company regulated by and lawfully operating under a valid and existing cable communication franchise issued by Boone County.

(b) Gratuities and Payments to Permit Service Prohibited.

Neither the owner of any multiple unit residential dwelling nor his agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of a cable communication service to the dwelling unit occupied by a tenant or resident requesting service. This section does not apply to any such contracts in existence on the date this franchise is granted. In addition, the CATV Board may waive this section for any future such contracts.

(c) Penalties and Charges to Tenants for Service Prohibited.

Neither the owner of any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or received cable communication service from Company, operating under a valid cable communications franchise issued by Boone County. Any person convicted of violating any provision of this section is subject to a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) for each offense. Each day's violation of this section shall be considered a separate offense.

(d) Reselling Service Prohibited.

No person shall resell, without the expressed, written consent of both Company and the CATV Board, any cable service, program or signal transmitted by a cable communication company operating under

a franchise issued by the County.

(e) Protection of Property Permitted.

Nothing in this article shall prohibit a person from requiring that cable communications system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

(f) Risks Assumed by Company.

Nothing in this article shall prohibit a person from requiring a cable communication company from agreeing to indemnify the owner, or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable communication facilities.

Section 12. Theft of Services and Tampering

(a) No person, whether or not a subscriber to the cable system may intentionally or knowingly damage or cause to be damaged any wire, cable, conduit, equipment or apparatus of Company, or commit any act with intent to cause such damage, or to tap, tamper with or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus, or appurtenances of Company with the intent to obtain a signal or impulse from the cable system without authorization from or compensation to Company, or to obtain cable television or other communications service with intent to cheat or defraud Company of any lawful charge to which it is entitled.

(b) Any person convicted of violating any provision of this section is subject to a fine of not less than Fifty Dollars (\$50.00) nor more the Five Hundred Dollars (\$500.00) for each offense. Each day's violation of this section shall be considered a separate offense.

Passed by the Fiscal Court of Boone County on the ____ day of November, 1989.

Bruce Ferguson
Judge Executive

ATTEST:

County Clerk

ACCEPTANCE

Company accepts and hereby agrees to be bound by all the terms and conditions of this franchise.

Jacor Cable, Inc.

Dated:

Frank W. Allen, Jr.
President

Commonwealth of Kentucky) ss:
County of Boone)

Subscribed and sworn to before me by Frank W. Allen, Jr.,
President of Jacor Cable, Inc., a Kentucky Corporation, on its
behalf this _____ day of November, 1989.

Notary Public
Commission expires:_____

COUNTY OF BOONE

ORDINANCE No. 450.1

GRANTING A CABLE TV FRANCHISE TO

STORER COMMUNICATIONS OF NORTHERN KENTUCKY, INC.

ORDINANCE NO. 450.1

AN ORDINANCE GRANTING A FRANCHISE TO Storer Communications of Northern Kentucky, Inc., ITS SUCCESSORS OR ASSIGNS, TO OWN AND OPERATE AND MAINTAIN A CABLE COMMUNICATION SYSTEM IN COUNTY OF BOONE, KENTUCKY SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE, AND PROVIDING FOR THE REGULATION AND USE OF SAID SYSTEM.

WHEREAS, the County of Boone has following reasonable notice conducted a full public hearing affording all persons reasonable opportunity to be heard, which proceeding was concerned with the analysis and consideration of the technical ability, financial condition, legal qualification and general character of the franchisee; and

WHEREAS, the County of Boone, after such consideration, analysis and deliberation, has approved and found sufficient the technical ability, financial condition, legal qualification, and character of said franchisee; and

WHEREAS, the said County of Boone has at the said public hearing, also considered and analyzed the plans of the franchisee for the construction and operation of the cable communication system and found the same to be adequate and feasible in view of the needs and requirements of the entire area to be served by the said system;

NOW, THEREFORE, be it ordained by the County of Boone, Commonwealth of Kentucky, that there is hereby created, granted, and established a nonexclusive franchise for a period of fifteen (15) years for the installation.

operation and maintenance of a cable communications system within incorporated and unincorporated County of Boone to the Storey Communications of Northern Kentucky, Inc.

Provided, however, that the said franchise shall be subject to the following terms and performance conditions:

ARTICLE I. GRANT OF FRANCHISE AND GENERAL PROVISIONS

SECTION 1. TITLE OF ORDINANCE

This ordinance shall be known and may be cited as the "Boone County Cable Communication Franchise," hereinafter "Franchise," and it shall become a part of the ordinances of the County.

SECTION 2. DEFINITIONS

For the purpose of this ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

a. "Basic Service" shall mean all subscriber services provided by the Company in one or more service tiers, including the delivery of broadcast signals, access channels and origination channels, covered by the regular monthly charge paid by all subscribers to a particular service tier, excluding optional services for which a separate charge is made.

b. "Cable Communication System" or "CATV System," shall mean a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video and other forms of electronic or electrical signals, located in the County. Said definition shall not include any such facility that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control or management, which does not use County's and cities' rights-of-way.

c. "CATV Board" or "Board" shall mean the County cable television regulatory authority as described in Article III, Section 5 of this ordinance.

d. "Class IV Channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

e. "Company" is Storer Communications of N. Ky., Inc. the grantee of rights under this ordinance awarding a franchise, or the successor, transferee or assignee.

f. "Converter" means an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all signals delivered at designated converter dial locations.

g. "County" is Boone County in the Commonwealth of Kentucky.

h. "FCC" shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

i. "Gross Revenues" shall mean all revenue derived directly or indirectly by the Company, its affiliates, subsidiaries, parent, and any person in which the Company has a financial interest, from providing cable television services within the County, including, but not limited to, basic subscriber service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, and advertising revenues; provided, however, that this shall not include any taxes on services furnished by the Company herein imposed directly upon any subscriber or user by the commonwealth, local or other governmental unit and collected by the Company on behalf of said governmental unit.

j. "Initial Service Area" means all areas in Boone County having at least fifty (50) dwelling units per street mile, or as offered by the Company in its application to provide service to the County, whichever formula offers the more inclusive service area.

k. "Installation" shall mean the connection of the system from feeder cable to subscribers' terminals.

l. "Monitoring" means observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever. Provided, monitoring shall not include systemwide, nonindividually addressed sweeps of the system for purposes of verifying system integrity, controlling return path transmissions, or billing for pay services.